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Introduction :

In interpreting the law and applying it, Courts do make law, not ostensibly nor ostentatiously but imperceptibly. This process may render the certainty of law a delusion. It is none the less inevitable that law should always be on the march in view of changing facts of life. Rich, J., of the Australian High Court once observed[1]: "One of the tasks of this Court is to preserve the uniformity of determination. It may be that in performing the task the Court does not achieve the uniformity that was desirable and what uniformity is achieved may be uniformity of error. However, in that event, it is at least uniformity". Statute construction is increasingly becoming the largest part of judicial work and in that process as Denman, L. J., remarked: "A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases"[2]. Thus it is not possible to interpret and apply the law without at the same time developing it. During the year under review about eight decisions of the Supreme Court have been reported in the columns of this Journal besides almost all important decisions of our High Court. An endeavour is made hereunder to advert briefly to the course of development of law in and the points of law emerging from the decisions rendered under some of the well-known and fairly significant titles of law.

Courts : Their jurisdiction, powers and duties: In *Orient Mercantile Agency* v. *Presiding Officer*[3], the Supreme Court points out that where after the judgment of single Judge had been taken on appeal and, rightly or wrongly, the Division Bench, in the appeal against his judgment had placed a certain construction on that judgment it is not open to the single Judge thereafter to issue any clarificatory order and judicial discipline requires that he should not issue any clarification that the appellate Court was wrong in the construction it had placed on his judgment, *Management of Sayani Talkies* v. *Ramamurthi*[1], states that the civil Court has no jurisdiction to enforce a contract of personal service and it could award only damages for breach of such contract. *Darasuram Town Panchayat* v. *Thangarajan*[2], holds that it will be furthering justice if the plaint in a suit beyond the jurisdiction of Small Cause Court is returned to the litigant concerned for presentation to the proper Court instead of dismissing the suit and such a process would not only further justice but would also avoid miscarriage of justice.

Constitutional Law :

In *Ajantha Transports (P.) Ltd.* v. *T. V. R. Transports*[3], the Supreme Court decides that considerations which are relevant for applying Articles 14 and 19 (1) (*g*) of the Constitution could not be foreign to the scope of the permit-issuing power under section 47 of the Motor Vehicles Act; that when the power to grant permits shows that its exercise is meant to be judged on the touchstone of the interest of the public generally, the test being broad enough to take in applications of Articles 14 and 19 (1) (*g*) read with relevant proviso to the section, which require a just and reasonable balancing and reconciliation of general and individual interests it would not be

1. *Waghorn* v. *Waghorn*, (1942) 65 C.L.R. 289, 293.
2. *Seaford Court Estates Ltd.* v. *Asher*, (1942) 2 All E.R. 155, 164.
3. (1975) 1 M.L.J. (S.C.) 1.

1. (1975) 1 M.L.J. 35.
2. (1975) 1 M.L.J. 283.
3. (1975) 2 M.L.J. (S.C.) 16.

correct to hold that the power contained in section 47 can go beyond it or against it; that in cases where everything else is absolutely equal as between two applicants for permits it could be said that application of the principle of equality of opportunity which is covered by Article 14 may enable a person who is not a fresh grantee to obtain a preference; and that such a consideration could not be said to be outside the interest of the public generally so as to include within its purview application of tests underlying provisions giving fundamental rights to citizens under Articles 14 and 19 of the Constitution. *Chinna Boyan* v. *Commissioner for H. R. & C. E.*[1], holds that what Article 26 (*d*) of the Constitution provides is that the administration of the property shall be in "accordance with law"; that this could only mean that the administration and management could be regulated by law and there is no absolute right vested in a religious denomination in the matter of administration of a temple and its properties; that this would not, however, include a right to take away the entire right to management leaving a mere husk; that though "regulation" within the meaning of Article 19 might include a total deprivation of the right, in the context of Article 26 it could not be held that the law could take away the entire right or deprive the religious denomination of any right in the management of its properties; and a law which so takes away the right of administration from the hands of the religious denomination and vests it in any other authority would amount to a violation of the right guaranteed under Article 26. *Rev. Br. A. Thomas* v. *Dy. Inspector of Schools*[2], lays down that it will be an unreasonable interference to tell an institution that it could not employ a more highly qualified teacher in the interests of better standards of education, in its schools because it would not assist the scheme of the Government to find employment for higher grade teachers; that the Government cannot insist that a protected institution cannot take a more highly qualified teacher in the interests of higher standards of education in the institution; that such insistence will be an uncalled for, unreasonable and arbitrary interference with the management of the school and the aid given by Government does not clothe it with any right to interfere with the freedom of management of the institution to employ teachers of their choice who have a higher qualification than that prescribed by the Government Department. In *Sri Navaneetheswaraswami Devasthanam* v. *State of Madras*[1], the Supreme Court expresses the view that a Government notification notifying a certian village belonging to the Devasthanam, a religious trust, under the provisions of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1963, cannot be struck down on the ground that no provision for compensation in accordance with the second proviso to Article 31-A (1) was made; that the provisions of the Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961, are not applicable to lands held by a religious trust of a public nature and therefore the provisions of the Act fixing the ceiling on ownership of land was not applicable to a Devasthanam; and, that it was only if the ceiling provision was applicable that the second proviso to Article 31-A (1) would be attracted. *Mohammed Karimuddin* v. *State of Madras*[2], decides that the law of eminent domain enables the State to compulsorily acquire private land; that by such a statutory process the owner is deprived of his rights to property; that the land acquisition process necessarily involves a substantial abridgement of the rights of ownership as would amount to deprivation of the owner of his property and consequential damage as is referred to in section 23 of the Land Acquisition Act: that the word "possession" in section 48 of the Act has to be interpreted liberally; and the meaning given to "possession" in the decided cases under Article 31 of the Constitution provides a safe guide for interpreting that word in section 48, Land Acquisition Act. In *Ajantha Transports (P.) Ltd.* v. *T. V. K. Transports*[3], the Supreme Court states that the ques-

1. (1975) 2 M.L.J. 294.
2. (1975) 1 M.L.J. 353.

1. (1975) 2 M.L.J. (S.C.) 1.
2. (1975) 2 M.L.J. 396.
3. (1975) 2 M.L.J. (S.C.) 16.

tion whether an order is a final one determining the rights of the parties is material even when considering the question of propriety of interference under Article 136 of the Constitution. *Mohammed Karimuddin* v. *State of Madras*[1], expresses the view that where the dominant purpose behind the withdrawal of a notification for acquisition of land under the Land Acquisition Act after the lapse of nine years appeared to be to help squatters who had trespassed into the land subsequent to the notification of acquisition to the utter prejudice of the owner who was not even consulted in the matter and there was also violation of the principles of natural justice when the State acted as it did, the order of withdrawal has to be removed and quashed on *certiorari*. *Fishermen Co-operative Society* v. *Collector of Thanjavur*[2], decides that because a show-cause notice was served on the appellant, the latter submitted an explanation and the same was considered by the Authority concerned does not mean that there was compliance with the principles of natural justice; that the compliance should be a substantial one, that is to say, it should be not merely in form, the opportunity given must be complete, reasonable and adequate which includes also that when an explanation is submitted by the person who was asked to show cause the Authority concerned should apply its mind to the explanation and not merely say that it is unsatisfactory; and that when the orders of the concerned Authority were subject to review by the High Court, a non-speaking order of the Authority cannot be held to show its reasonableness or compliance with the principles of natural justice and is liable to interference under Article 226. *Balakrishna Mehta* v. *Mahadeva Iyer*[3], holds that *certiorari* is intended to remove errors of law apparent on the face of the record and not to set right the mistakes committed by parties or their counsel. *North Arcot District Pawn-Brokers Association* v. *Secretary to Government of India*[4] points out that only a person whose rights are alleged to have been threatened or transgressed or on whom obligations are imposed by any statute can approach the High Court under Article 226 of the Constitution and that an Association registered under the Societies Registration Act cannot maintain a writ petition. *State of Tamil Nadu* v. *Ambalavana Pandara Sannadhi*[1] lays down that Article 226 is not subject to any limitation as to the jurisdiction of the High Court but that in exercising that power the High Court would not allow the parties to by-pass or circumvent or defeat any of the statutory provisions providing for other remedies in specific cases. *Govind Naicker, In re*[2], states that there is no conflict between the provisions of Article 227 of the Constitution and section 397 (3) of the Criminal Procedure Code, 1973; that under Article 227 the High Court exercises superintendence over all Courts and Tribunals and has the power to interfere and to see that the Courts and Tribunals exercise their functions within the limits of their authority; that under the Article the High Court has a supervisory and an appellate jurisdiction and considers the area of the inferior jurisdiction and the qualifications and conditions of its exercise; that an error of law apparent on the face of the record is also subject to correction by the High Court exercising its powers under this Article; that this power however does not justify an interference with concurrent findings of fact; that when exercising its powers under section 397, Criminal Procedure Code, the High Court can consider the correctness, legality or propriety of any pending sentence or order, recorded or passed, and the regularity of any proceedings of such inferior Court; and there is thus no conflict between the provisions of section 397 and Article 227 of the Constitution.

Industrial Disputes Act and related legislation:—In *Registrar of Trade Unions* v. *Government Press Employees Union*[3], it is held that inasmuch as the Government Press has been manufacturing with the aid of the Printing Press as well as by physical labour and on a large scale such articles as challans, gazettes, calendars, budget papers etc., it is undoubtedly an "industry" within the meaning of the Trade Unions Act; that the Government Press

1. (1975) 2 M.L.J. 396.
2. (1975) 1 M.L.J. 168.
3. (1975) 1 M.L.J. 247.
4. (1975) 1 M.L.J. 290.

1. (1975) 2 M.L.J. 50.
2. (1975) 2 M.L.J. 386.
3. (1975) 2 M.L.J. 347.

Employees' Union is an association of workmen employed in an "industry", no matter whether it is an industry conducted by the Government or by the private sector and is therefore entitled to registration under section 6 of the Act; and that the workmen employed in the Government Press are workmen entitled to the benefits of the Trade Unions Act, 1926. *English Electric Company* v. *Presiding Officer*[1], decides that if an employee is prevented from putting some questions to a witness during domestic enquiry conducted by the Enquiry Officer and the questions were not even recorded it amounts to a violation of the principles of natural justice; that where an order of discharge was based on all the charges held proved against the employee by the Enquiry Officer and not with reference to any particular charge out of the said charges, the Labour Court has got jurisdiction to consider whether the punishment imposed would have been imposed on the basis of the charges held proved by the Court and if there was no evidence to show that the punishment would have been imposed even with regard to the charges held proved by the Labour Court, the Labour Court would be justified in setting aside the punishment. *Binny Ltd.* v. *G. C. Thomas*[2] expresses the view that the non-production of a company's cash book during a domestic enquiry against an employee of the company relating to certain sums of money amounts to preventing the employee from proving his innocence and constitutes a denial of opportunity to put forward his case; that where at the domestic enquiry the employee had put forward a defence he is entitled to know how his defence had been considered and rejected before it was found against him that the charges framed were proved; that where an employee was not given a copy of the judgment of the Enquiry Officer and he came to know of it only when it was marked in the Court during the course of the trial of the suit; it would clearly constitute violation of the principles of natural justice; that when witnesses are suddenly produced and examined by one side, the other side will be at a disadvantage in cross-examining such witnesses and particularly in a domestic enquiry, hence the other side must have previous information as to who would be examined so that the cross-examination of such witnesses may be effective; that where the termination of the services of an employee is in the nature of termination simpliciter without being preceded by a domestic enquiry into the alleged misconduct of the employee and without the termination being based on the said enquiry, the order is not vitiated; that if, on the other hand when a person is dismissed on the basis of a domestic enquiry held against him into certain alleged misconduct held to be proved, the position will be entirely different; that in the former case, there will be no stigma attached to the employee concerned and in the other case a stigma will be attached which may have the effect of preventing him from seeking employment elsewhere. *State Bank of India* v. *Sundara Money*[1] points out that the fact that the word 'termination" in the definition of "retrenchment" in the Industrial Disputes Act is followed by the words "by the employer" is not indicative of the fact that termination should always and necessarily be by a separate order or an expression independently of the appointment order; that in either case, whether by notice or by effluxion of time, termination will be by the employer; and that if there is any indication in some form or other in the same document making the appointment or in any other way and the time at which the employment is to come to an end is indicated that will be a termination by the employer within the meaning of the definition of "retrenchment". *Chandra* v. *Presiding Officer, Labour Court*[2], takes the view that the definition of "person employed" in section 2 (12) of the Shops and Establishments Act, 1961, is more or less similar to the definition in section 2 (*s*) of the Industrial Disputes Act; and the definition in section 2 (*s*) of "person employed" read with section 4 (1) excludes persons employed in a position of management; but the similarity in the provisions of the two statutes will not make the decision under one statute conclusive with refer-

1. (1975) 1 M.L.J. 88.
2. (1975) 2 M.L.J. 223.

1. (1975) 2 M.L.J. 208.
2. (1975) 2 M.L.J. 371.

ence to the other statute. *Management of Jeewan Lal Ltd.* v. *Presiding Officer*[1] decides that the word "undertaking" has not been defined in the Industrial Disputes Act, though it defines "industry" as any business, trade, undertaking, manufacture or calling of employees and includes any calling, service, employment, handicrafts or industrial occupation or association of workmen; that section 25-FFF provides for compensation to workmen in case of closing down of undertaking; that having regard to the definition of "industry" it is not possible to equate undertaking with industry; that the transfer of a portion of an undertaking does not stand on the same footing as the closing down of a portion of an undertaking; that a closure of a part of an industrial undertaking is permissible; that the circumstances such as the nature and condition of machinery which can only produce sub-standard products of the company and the prohibition by the State of the manufacture in future of such sub-standard products which cannot conform to the I.S.I. standard and the difficulty in selling those sub-standard products in a competitive market where products manufactured by some modern sophisticated mills are available have to be taken to be unavoidable circumstances beyond the control of the company; and that an employer is not compelled by the statute to involve himself in unusual exertion or expenses with a view to avoid any particular circumstances necessitating the closure of the business. *Sri Rani Lakshmi Ginning and Weaving Mill* v. *State of Madras*[2] expresses the view that once an industrial dispute is validly pending on the file of a Court or Tribunal, it can be transferred by the Government in exercise of its power under section 33-B of the Industrial Disputes Act only on hearing both the parties to the dispute and that a mere mechanical reproduction of a statement "in the opinion of the Governor of Tamil Nadu it is necessary to transfer the said proceeding" is no reason. *Raju* v. *Madura District Central Co-operative Bank Ltd.*[3], points out that where a person was placed under suspension from a certain date and by a subsequent order was dismissed with effect from the date of suspension, so long as the order of dismissal dismissing the person from service with effect from the date of suspension stands, he cannot file a petition under section 33-C (2) of the Act claiming wages for the period of suspension as if such period stood separately without getting itself merged in the order of dismissal. *Chandra* v. *Presiding Officer, Labour Court*[1], states that though section 51 of the Shops and Establishments Act, 1947, specifically provides that any decision rendered by the Commissioner of Labour under that section shall be final and shall not be liable to be questioned in a Court of law, it is not possible to say that the Presiding Officer, Labour Court, acting under section 33-C (2) of the Industrial Disputes Act was bound by such decision and that the finality, given to the orders of the Commissioner of Labour under section 51 of the Shops Act is only for the purposes of that Act and not for the purposes of all other statutes. *Salem Malai Murasu* v. *Employees State Insurance Corporation*[2] and *Mysindia Tiles and Engineering Co.* v. *Employees State Insurance Corporation*[3], express the view that the Insurance Court is a statutory body and not a regular Court; hence Article 137, Limitation Act is not applicable to applications under the Employees' State Insurance Act. *Employees' State Insurance Corporation* v. *Sakthi Textiles (P.) Ltd.*[4], points out that the definition of "employee" under section 2 (9) of the Employees' State Insurance Act enumerates three classes of workers and has also an inclusive definition introduced as an amendment by Act XLIV of 1966; that in order to be an "employee" a person must be employed for wages in connection with the work of a factory or establishment and when directly employed by a principal employer must be on any work of or incidental or preliminary to or connected with the work of the factory or establishment; that a "factory" means any premises including the precincts thereof where twenty or more persons are employed and where in any part of it a manufacturing process is being carried on; and that persons employed in putting

1. (1975) 2 M.L.J. 143.
2. (1975) 1 M.L.J. 80.
3. (1975) 1 M.L.J. 83.

1. (1975) 2 M.L.J. 371.
2. (1975) 1 M.L.J. 242.
3. (1975) 1 M.L.J. 124.
4. (1975) 1 M.L.J. 127.

up additional buildings for the future expansion of an existing factory and totally unconnected with it would not come even within the inclusive definition of employee.

Contracts and ancillary laws:

Srinivasa Raghavan v. *Jayaraman*[1], states that to invoke the provisions of section 25 of the Indian Contract Act the following ingredients must be present: (*i*) the promise to pay must refer to a debt of which the creditor might have enforced payment but for the law of limitation, in other words the consideration for the promise should be an identifiable debt, the recovery of which is barred by limitation; (*ii*) it should be a distinct promise to pay wholly or in part such a debt; and (*iii*) the promise must be in writing and signed by the person or his duly authorised agent; that if there is a statement of fact of the promise to pay contained in a letter and it is shown as part of the cause of action, there could be no objection to considering the claim under section 25 (3) even if the suit is *prima facie* barred on the original debt itself; and, that if the letter does not contain any promise to pay interest the liability is only to pay the principal sum and not interest. *Ethirajulu Naidu* v. *Chinnikrishnan Chettiar*[2], makes it clear that a promise to pay a time-barred debt would be valid and enforceable if an express promise is made in writing and signed by the person sought to be charged therewith; that nothing short of an express promise will provide a fresh period of limitation; that both an acknowledgment under section 18 of the Limitation Act and a promise within the meaning of section 25 (3), Contract Act have the effect of creating a fresh starting point of limitation if they are in writing signed by the party or his authorised agent, but while an acknowledgment under the Limitation Act in order to be valid must be made before the expiry of the period of limitation a promise under section 25 (3) of the Contract Act to pay a debt may be made after the debt has become barred by limitation; that the essence of an account stated being bilateral the promise to pay made by one party is good enough consideration for the promise made by the other; and that such a contract being fully supported by consideration is enforceable at law and would constitute a new cause of action. *Khivraj Chordia* v. *Esso Standard Eastern Inc.*[1], lays down that it is fundamental that notwithstanding the restrictions and qualifications imposed by operation of technical rules, a liberal construction of written documents is to be made, because of the simplicity of the laity, and with a view to carry out the intention of the parties and uphold the document; that words used in written instruments ought to be made subservient and not contrary to the intention of the parties; that it is necessary in such circumstances to find the real import of the situation by the use of the prescribed yardstick under the contract itself and render justice to the parties; that it would be the duty of Courts to interpret liberally written documents with reference to the intention of the parties by adopting the instrument and thus doing substantial justice between the parties; that *ita scriptum est* is the first principle of interpretation of documents, but to this a necessary corollary is always attached with a rider compelling parties or Courts, if they are called upon to interpret an instrument to bear in mind not only the script of the instrument but also the *sententia*, that is the intention of the parties as inhered in the instrument itself. *M/s. Bright Brothers* v. *J. K. Sayani*[2] holds that the requirement of reasonable notice of revocation or renunciation contemplated by section 206 is applicable only to the "previous revocation and renunciation" dealt with by section 205, that is, it is applicable only to agencies in which the parties have contracted either expressly or by necessary implication that the agency should continue for a particular period of time and that the expression "such revocation or renunciation" occurring in section 206 will refer only to the revocation and renunciation dealt with in section 205. *Pudukottah Textiles Ltd.* v. *B. R. Adityan*[3], points out that section 230 of the Contract Act makes it clear that in the absence of any contract to that effect an agent cannot personally enforce con-

[*To be continued*]

1. (1975) 1 M.L.J. 414.
2. (1975) 1 M.L.J. 5.

1. (1975) 2 M.L.J. 65.
2. (1975) 2 M.L.J. 257.
3. (1975) 1 M.L.J. 356.